

**Letter of Findings Number: 02-20200237
Corporation Income Tax
For the Year 2014-2017**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

HOLDING

S Corporation failed to provide a reasonable explanation or evidence for the Department to abate its penalty for failing to file its Indiana Tax Returns.

ISSUES

I. Tax Administration - Penalty and Interest.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-8.1-10-2.1; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 15-11-2](#).

Taxpayer protests the Department's imposition of penalty and interest.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation. The Indiana Department of Revenue ("Department") assessed Taxpayer with a penalty for failure to file its S Corporation's Indiana Tax Return during the tax years at issue, 2014 through 2017. Taxpayer protested the assessment, the Department held a hearing, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Tax Administration - Penalty.

DISCUSSION

Taxpayer claims it was unaware that it needed to file S Corporation Tax Returns because the corporate officers believed it would flow through to their own personal tax returns. Additionally, Taxpayer claims the failure to file was unintentional and it believes it does not own any base tax. Thus, Taxpayer is asking the Department to abate the penalty.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

Indiana imposes a tax on every corporation's adjusted gross income derived from sources within Indiana. IC § 6-3-2-1(b).

For the years at issue, IC § 6-8.1-10-2.1 in relevant part states;

- (a) Except as provided in [IC 6-3-4-12\(j\)](#) and [IC 6-3-4-13\(l\)](#), a person that:
(1) fails to file a return for any of the listed taxes;

- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
 - (3) incurs, upon examination by the department, a deficiency that is due to negligence;
 - (4) fails to timely remit any tax held in trust for the state; or
 - (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department; is subject to a penalty.
- (b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10 [percent]) of:
- (1) the full amount of the tax due if the person failed to file the return;
 - (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
 - (3) the amount of the tax held in trust that is not timely remitted;
 - (4) the amount of deficiency as finally determined by the department; or
 - (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.
- (c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.
- (d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.
- (e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.
- (f) The department shall adopt rules under [IC 4-22-2](#) to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.
- (g) A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

[45 IAC 15-11-2](#) provides guidance regarding how to interpret reasonable cause:

In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

According to IC § 6-3-2-1(b), Taxpayer is subject to tax because the S corporation derived from sources within Indiana. Taxpayer admittedly failed to file its Indiana Tax Returns from 2014-2017. IC § 6-8.1-10-2.1 allows for the Department to penalize Taxpayer for failing to file the tax returns at issue. Taxpayer should have known it needed to file Indiana Tax Returns. However, IC § 6-8.1-10-2.1(h) dictates that the Department shall waive the penalty if the person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect.

In this case Taxpayer did not understand that every S corporation must file a tax return every year regardless of whether or not it owes taxes or that a S corporation is a pass-through entity. Taxpayer's ignorance to having to file

its S corporation's returns for four consecutive years is not ordinary business care, as the Department interprets [45 IAC 15-11-2](#). Moreover, Taxpayer filed its S corporation's return late for the years following the ones at issue in this case. Thus, the Department will not waive the penalty for failure to file.

FINDING

Taxpayer's protest is denied.

September 29, 2020

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